

Remarks

Claims 1-31 are pending in the present application with claims 1, 14, 17, 20, 29, and 31 in independent form. Independent claims 1, 14, 17, 20, 29, and 31 are currently amended, as discussed below. Dependent claim 24 is amended merely to make a correction.

Specifically with respect to the amendment to the independent claims, independent claims 1, 14, 17, 20, 29, and 31 are currently amended to claim that the elastic mold part is stretchable by generating a low pressure in the housing space; however, the low pressure need not be generated by moving the moveable, dimensionally stable part. As set forth above, this amendment was discussed in the April 23, 2010 interview with respect to independent claim 1. Similar amendments are currently made to independent claims 14, 17, 20, 29, and 31. Support for this amendment is found at page 3, lines 8-10, which states, "Naturally, it is likewise possible to enlarge the housing space via the moveable part and only thereafter to stretch the mold part by application of a vacuum," which, as set forth above, was also discussed in the April 23, 2010 interview.

Claims 1-12, 14-27, and 29-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0086079 to Kuo (hereinafter Kuo). Claims 13 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kuo and further in view of German reference DE 900 554 to Hoos (hereinafter Hoos). Claims 1, 2, 5-8, 14-15, and 17 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 7, 8, 10, and 12 of co-pending U.S. Patent Application No. 11/578,082.

Rejections under §103(a)

The Applicant respectfully asserts that independent claims 1, 14, 17 20, 29, and 31, as currently amended, are non-obvious over Kuo. Specifically, as set forth in the interviews summarized above, the Applicant respectfully asserts that Kuo fails to teach or suggest "a moveable, dimensionally stable part of said housing element" as claimed in independent

claims 1, 14, 17, 20, 29, and 31.

By way of background, with reference to Figure 3 of the present application, the device of the present application includes an elastic mold part 28 and a dimensionally stable housing element 12 housing the mold part 28. The mold part 28 is placed in a housing space of the housing element 12. This housing space can be enlarged by moving a moveable, dimensionally stable part 26 of the housing element 12. The elastic mold part 28 is stretchable by generating a low pressure in said housing space for removing the object.

As set forth above, the Applicant respectfully asserts that Kuo fails to teach or suggest “a moveable, dimensionally stable part of said housing element” as claimed in independent claims 1, 14, 17, 20, 29, and 31. In contrast, Kuo discloses a housing 1 defining a relatively large cavity 11 and an elastic mold 2 disposed in the cavity 11. To remove molded lipstick from the elastic mold 2, the elastic mold 2 is merely stretched outwardly by the application of negative pressure through the orifice 12 to the cavity 11 to expand the elastic mold 2. Since Kuo fails to teach, or even suggest, “a moveable, dimensionally stable part of said housing element” as claimed in independent claims 1, 14, 17, 20, 29, and 31, the Applicant respectfully asserts that independent claims 1, 14, 17, 20, 29, and 31 are novel and non-obvious over Kuo.

Further, as set forth in discussion of the related art in the present application on page 1, lines 9-25, one problem with a device such as that of Kuo is that the elastic mold loses dimensional stability from repeated use. Also, because the elastic mold 2 of Kuo is not supported during the filling process, the elastic mold 2 can expand differently each time it is filled resulting in variations in shape between different molded objects because the pressure of the filled-in material can expand at different points to displace the elastic mold 2 at different places during each molding process. In contrast, referring to the present application, the moveable, dimensionally stable part 26 of the housing element 12 supports the mold part 28 during molding to ensure that the mold part 28 does not improperly deform when the paste-like material is filled into the mold part 28, as discussed in the paragraph beginning on page 2, line

4. In addition, the moveable, dimensionally stable part 26 prevents excessive stretching of the mold part 28 to retain the dimensionally stability of the mold part 28, as discussed at page 2, line 23 through page 3, line 10. For these reasons, the Applicant respectfully asserts that independent claims 1, 14, 17, 20, 29, and 31 are non-obvious over Kuo.

Amendments to Independent Claims 1, 14, 17, 20, 29, and 31

As set forth above, independent claims 1, 14, 17, 20, 29, and 31 are currently amended to claim that the elastic mold part is stretchable by generating a low pressure in the housing space; however, the low pressure need not be generated by moving the moveable, dimensionally stable part. In any event, even after the current amendments to the independent claims, each of independent claims still claim “a moveable, dimensionally stable part of said housing element.” As set forth above, Kuo fails to teach, or even suggest, “a moveable, dimensionally stable part of said housing element,” as claimed in independent claims 1, 14, 17, 20, 29, and 31. As such, the Applicant respectfully asserts that, even after the current amendments, each of independent claims 1, 14, 17, 20, 29, and 31 are non-obvious over Kuo.

Double Patenting Rejection

The Applicant respectfully asserts that the obviousness-type double patenting rejection in the present application should be withdrawn. With reference to MPEP §804LB.1.:

“If a ‘provisional’ nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.”

The present application was filed earlier than co-pending U.S. Patent Application No. 11/578,082. Since the obviousness-type double patenting rejection is the only rejection remaining in the present application, the Applicant respectfully asserts that the obviousness-type double patenting rejection in the present application should be withdrawn in accordance with the above-referenced section of the MPEP.

In view of the foregoing, it is respectfully submitted that independent claims 1, 14, 17, 20, 29, and 31 and the claims that depend therefrom, are both novel and non-obvious such that these claims are in condition for allowance, which allowance is respectfully requested. If any issue regarding the allowability of any of the pending claims could be readily resolved, or if other action could be taken to further advance prosecution, such as an Examiner's Amendment, it is respectfully requested that the Examiner telephone the undersigned in this regard.

Although no fees are believed to be due at this time, the Commissioner is authorized to charge our Deposit Account No. 08-2789 in the name of Howard & Howard Attorneys PLLC for any fees or credit the account for any overpayment for this matter.

Respectfully submitted,
HOWARD & HOWARD ATTORNEYS PLLC

Dated: April 29, 2010

/Christopher M. Francis/
Christopher M. Francis, Registration No. 59,511
450 West Fourth Street
Royal Oak, MI 48067
(248) 723-0392